IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TRAVELERS INDEMNITY CO. CORP. and TRAVELERS PROPERTY CASUALTY CORP. as Subrogee of OBERG INDUSTRIES, and OBERG INDUSTRIES, in its own right,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 01-0070**
CTS CON-WAY TRANSPORTATION SERVICES,	)	
Defendant.	)	

Opinion

COHILL, D.J.

This is an action for damages arising out of the interstate transportation of freight, brought under the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706.[1] Before the Court is a motion for summary judgment on the question of liability with accompanying brief (Doc. 13) filed by defendant CTS Con-Way Transportation Services ("Con-Way"). Plaintiffs have filed a brief in opposition (Doc. 14), to which the defendants have replied (Doc. 15).

We have jurisdiction under 49 U.S.C. § 14706 and 28 U.S.C. § 1337, because the action arises under a federal statute regulating commerce and the amount in controversy exceeds $10,000.

Having now considered the submissions of the parties and the applicable law, for the reasons set forth below we will deny defendant's motion.

Background

The facts in this case are largely undisputed. On September 9, 1998, Con-Way executed a Straight Bill of Lading to transport certain freight by motor carriers across state lines from Arizona to Pennsylvania. The shipment weighed 1,836 pounds. The shipper is listed as "Oberg Arizona" and the

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1 The Carmack Amendment was formerly codified at 49 U.S.C. § 11707, and there are inconsistencies in case citations to statutory provisions.

consignee is "OSTC."

The freight arrived at its destination on January 14, 1998. The Bill of Lading is marked "PREPAID" and the word "Damaged" is hand-written on it. Def.s' Ex. A. Also hand-written on the Delivery Receipt is the following: "CASE BROKEN NOT SECURED TO SKID." Pls.' Ex. A.

The Bill of Lading states on its face:

> Carrier Liability: shipments valued at more than $25.00 per pound are of extraordinary value. Carrier's maximum liability is $25.00 per pound per package, subject to $250,000.00 maximum total liability per shipment, unless the shipper declares excess value on the Bill of Lading, requests excess liability coverage and pays an additional charge. The agreed value on household goods, used machinery, or personal effects does not exceed ten cents per pound per article, unless otherwise specified.

Def.s' Ex. A.

The $25.00 per pound is known as the "release value" or "released rate"of the shipment.

The shipper, Oberg Arizona, did not declare any value on the Bill of Lading, nor request any excess coverage or pay any additional freight coverage.

Con-Way maintains a Classification Exception Tariff naming class ratings on articles subject to released value. Def.s' Ex. E.

Plaintiffs filed a Cargo Loss of Damage Claim on September 28, 1998. Def.'s Ex. B. The claim alleged that a total of sixteen (16) items were missing with a total value of $17,120.00. The weight in pounds of the missing items was not indicated. Def.'s Ex. B.

Con-Way evaluated the claim and sent a letter declining it on October 13, 1998. Def.'s Ex. C.

Plaintiffs filed a lawsuit in the Court of Common Pleas of Armstrong County, and served an amended complaint on December 12, 2000. Defendant timely removed the action to federal court, since the amended complaint stated claims governed by the Carmack Amendment to the Interstate Commerce Act.

During the course of discovery, plaintiffs informed the defendant that the weight of the missing freight was seven (7) pounds. Def.s' Ex. D.

Defendant has filed a motion for summary judgment on the issue of maximum liability. For the purposes of this motion, Con-Way concedes that plaintiffs' freight was damaged or lost while in

defendant's control.

Summary Judgment Standard

Summary judgment is proper where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Childers v. Joseph*, 842 F.2d 689 (3d Cir. 1989). "Rule 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A court considering summary judgment must examine the entire record in the light most favorable to the nonmoving party, and draw all reasonable inferences in its favor. *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986). The court must not engage in credibility determinations at the summary judgment state. *Simpson v. Kay Jewelers, Div. of Sterling, Inc.*, 142 F.3d 639, 643 n. 3 (3d Cir. 1998) (*quoting Fuentes v. Perskie*, 32 F.3d 759, 762 n. 1 (3d Cir. 1994)).

The moving party bears the initial responsibility for demonstrating the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 325. An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson*, 477 U.S. at 247. This burden may be met by showing that there is an absence of evidence to support the non-moving party's case. *Id*. at 325. However, once the moving party has properly supported its motion, the opponent must provide some evidence that a question of material fact remains for trial. *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To meet this burden, the non-moving party may not rest upon mere allegations, general denials, or vague statements. *Bixler v. Central Penn. Teamsters Health & Welfare Fund*, 12 F.3d 1292 (3d Cir. 1993). The party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matushita*, 475 U.S. at 486. In other words, the non-moving party must go beyond the pleadings and show, through its own affidavits or by the depositions, answers to interrogatories and admissions on file, the specific facts showing that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324.

Analysis

Con-Way has moved for summary judgment on the maximum amount of any liability it may have for plaintiffs' loss.

The Carmack Amendment governs the liability of common carriers on bills of lading. Under the Carmack Amendment, a carrier is liable for "the actual loss or injury to the property" being transported in interstate commerce. 49 U.S.C. § 14706 (1995); *Beta Spawn, Inc. v. FFE Transp. Servs., Inc.*, 250 F.3d 218, 223 n. 4 (3d Cir. 2001). However, the statute permits a carrier to limit that liability. Under the release rate exception, a carrier may "establish rates for the transportation of property ... under which [its] liability ... is limited to a value established by written declaration of the shipper or by written agreement between [it] and [the] shipper if that value would be reasonable under the circumstances surrounding the transportation." *American Cyanamid Co. v. New Penn Motor Express, Inc.*, 979 F.2d 310, 313 (3d Cir. 1992) (quoting 49 U.S.C. § 11707(c)(4), 49 U.S.C. § 10730(b)(1)).

The Third Circuit has held that a carrier may limit its liability provided it (1) maintain a tariff within the prescribed guidelines of the Interstate Commerce Commission; (2) obtain the shipper's agreement as to his choice of liability; (3) give the shipper a reasonable opportunity to choose between two or more levels of liability; and (4) issue a receipt or bill of lading prior to moving the shipment. *Carmana Designs Ltd. v. North American Van Lines, Inc.*, 943 F.2d 316, 319 (3d Cir. 1991).[2]

Plaintiffs do not dispute that CTS has taken the above steps to limit its liability. The issue presented by this motion is how any liability should be calculated.

Con-Way asserts that it is liable, under the express terms of the Bill of Lading, for the set limit of $25.00 per pound for the number of pounds of goods plaintiffs lost. Accordingly, multiplying the seven (7) pounds lost or damaged by the $25.00 per pound released rate from the Bill of Lading, Con-Way

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The first requirement was made obsolete with the termination of the Interstate Commerce Commission. 49 U.S.C. § 11101. Indeed, the applicability of these elements has been rejected as obsolete in *Penske Logistics, Inc. v. KLLM, Inc.*, 285 F.Supp.2d 468, 474-75 (D.N.J. 2003) (citing *Sassy Doll Creations, Inc. v. Watkins Motor Lines, Inc.*, 331 F.3d 834, 841 (11th Cir. 2003)). These decisions hold that under the current statutory scheme, the release rate exception is sufficiently invoked where a carrier can show the existence of a written contract establishing a reasonable rate, and that a tariff was available and given to the shipper upon request. *Id*. at 475.

calculates its maximum amount of liability at $175.00.

Plaintiffs, on the other hand, contend that the Bill of Lading provides that the carrier's liability is $25.00 per pound per package. Plaintiffs argue that they shipped one package, at a weight of 1,836 pounds. Therefore, multiplying the 1,836 pound package by $25.00 per pound, plaintiffs calculate Con-Way's maximum liability at $45,900. They seek to recover $17,120, which is the value of the missing freight and which does not exceed defendant's maximum liability.

We have found no cases on all fours with the one before us. However, we have found no decisions assessing the measure of damages under CTS' proposed theory, and we are persuaded that the plaintiffs have properly calculated CTS' potential liability.

Defendant's basic argument is that the shipper cannot recover the actual value of its loss, but can only recover the agreed-upon $25.00 per pound for the weight lost -- which was seven pounds. However, cases addressing the calculation of damages under the Carmack Amendment in the context of other dispositive issues, uniformly impose liability for the *actual loss or injury* to the property up to the limits of liability established on the bill of lading.

For example, in a recent decision from this jurisdiction, *Penske Logistics, Inc. v. KLLM, Inc.*, the bill of lading set the value of the goods being shipped as not exceeding $1.50 per pound. 285 F.Supp.2d 468 (D.N.J. 2003). When the product was destroyed during shipment, the claimed loss was $59,283.03. The court rejected that amount. The court emphasized that liability under the Carmack Amendment is for actual loss, but that liability may be limited by the release rate exception to the value by contract in a receipt or bill of lading. Therefore, despite the overall value of the lost product, the carrier's liability was limited to $6,859.50, calculated as the shipment weight of 4,573 pounds multiplied by the release weight of $1.50 per pound.

Similarly, in *W.C. Smith, Inc. v. Yellow Freight Systems, Inc. v. Price Candy Co.*, the shipper sued for damages in excess of $20,000 to a piece of machinery transported by Yellow Freight. 596 F.Supp. 515 (E.D.Pa. 1983). The tariff provided that if the shipper failed to declare a released value, the shipment would be subject to the lowest released rate, which was ten cents per pound. The entire

shipment was for nine crates of machinery, and the declared weight of the shipment was 4000 pounds. Plaintiff sought to recover the full value of the damaged machinery. The court, however, concluded that since the shipper had not set a new released value in the blank spaces on the bill of lading, Yellow Freight's liability was limited to $400. This was calculated by multiplying the weight of the shipment by the released value.

CTS refers us to *American Cyanamid Co. v. New Penn Motor Express, Inc.*, for the proposition that the released value bears no relation to the property's intrinsic worth. In that case, the entire shipment of DTP vaccine being shipped was lost because the carrier failed to protect it from freezing per the shipper's instructions. The released rate stated on the bill of lading was $1.65 per pound. American Cyanamid challenged the reasonableness of the released rate, and sought to recover the contract price of the vaccine, which it stated was $908,040. The Third Circuit concluded that American Cyanamid could only recover $2,084, which was the released rate of $1.65 per pound multiplied by the 1,260 pounds of the DTP vaccine being shipped. This was the amount the parties had contracted to as the limit of liability, and the fact that the overall value of the shipment far exceeded that amount was not relevant.

American Cyanamid, then, holds that the released value agreed to by contract in the Bill of Lading establishes "the maximum compensation that the parties agree the shipper may recover for a loss," even if the total value of the shipment exceeds that amount. *American Cyanamid Co. v. New Penn Motor Express, Inc.,* 979 F.2d 310, 314 (3d Cir. 1992) (quoting *Shippers Nat'l Freight Claim Council, Inc. v. ICC,* 712 F.2d 740, 748 n. 8 (2d Cir. 1983)). This decision does not support CTS' argument that it is only responsible for the released rate multiplied by the seven pounds plaintiffs' loss weighed. Defendant has not referred us to any authority to support its calculation of potential liability, nor have we found any.

If plaintiffs establish liability at trial, they are entitled to recover the actual value of the lost goods, provided that this amount does not exceed the upper limit of liability established by contract in the Bill of Lading as $250,000. Defendant's maximum liability shall be calculated by multiplying the shipment

weight of 1,836 pounds times the released rate of $25.00 per pound, which is $45,900.

Conclusion

The bill of lading, which is the contract between the parties, limits CTS's liability to $25.00 per pound, with a maximum of $250,000. We conclude as a matter of law that defendant's maximum liability shall be calculated by multiplying the shipment weight of 1,836 pounds times the released rate of $25.00 per pound. Therefore defendant's maximum liability for plaintiffs' loss shall be $45,900.

An appropriate Order follows.

February 5, 2004
Date

Maurice B.Cohill, Jr.
Senior United States District Judge

cc: Counsel of record

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ORDER

AND NOW, to-wit, this _____ day of February, 2004, for the reasons set forth in the accompanying Opinion, it is hereby ORDERED, ADJUDGED, and DECREED that defendant's motion for summary judgment (Doc. 13) be and hereby is DENIED.

Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Counsel of record